



State of Washington  
Department of Revenue

# Excise Tax Advisory

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Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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NUMBER: 321.16.179/224

REPEALED 9/6/2001

CONVERSION DATE: July 1, 1998

## AIR TAXI SERVICE, CHARTER FLIGHTS AND STUDENT TRAINING FEES

Issued: April 1, 1991

REPEALED 9/6/2001

The revision to this Excise Tax Bulletin (ETB) is a clarification and does not represent a change of the Department's tax position. This bulletin incorporates the decision of the Supreme Court Of The United States in *ALOHA AIRLINES v. DIRECTOR OF TAXATION OF HAWAII*, 464 U.S. 7 (1983) which was previously not addressed by an ETB, but has been followed by the Department since 1983.

This bulletin discusses the various tax classifications which apply to gross receipts earned from air taxi service, charter flights, student training fees, and other activities involving services performed with the use of an aircraft.

In *ALOHA AIRLINES* the Court concluded that under Section 7(a) of the Airport Development Acceleration Act of 1973 (ADAA) a State cannot impose a gross receipts tax on the activity of hauling persons or U.S. mail for hire within the limits of any Federal airway. This includes flights that begin and end in Washington (intrastate flights) when the operation of the aircraft is within any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce. (See 49 U.S.C. ' 1301 and ' 1513(a)). There is no prohibition in federal law from taxing the intrastate transportation of freight with the exception of U.S. mail.

The Department has concluded that a distinction cannot be made between charter flights and regularly scheduled commercial flights. Transporting passengers or U.S. mail is not a taxable activity when the aircraft flies in air space within Washington that affects the safety of interstate, overseas, or foreign air commerce and is within the limits of any Federal airway, either by air charter or regularly scheduled commercial flights. Thus, income from hauling persons or U.S. mail by aircraft from a

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***ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.***

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Washington location to another Washington location is not taxable. This exclusion from tax does not apply to persons hauling freight by aircraft when the flight begins and ends in Washington or to flights which are in the nature of sightseeing or similarly related activities.

The following is a list of activities with the tax classification identified which applies to the activity. This list is intended to be representative of activities performed with aircraft, but should not be considered as all inclusive.

Other Public Service (Public Utility Tax):

1. Hauling freight by air when the haul begins and ends in Washington. As noted above, hauling passengers or U.S. mail is exempt. Any additional charge to a passenger for transporting excess luggage is considered incidental to hauling of the passenger and is not considered to be for hauling freight.

Service and Other Activities (B&O Tax):

1. Crop dusting, seeding, spraying, cattle roundup, and similar agriculture related activities.
2. Banner towing.
3. Aerial photography.
4. Fire fighting.
5. Rescue Operations.
6. Air ambulance operations where the operator provides medical technicians and emergency treatment while in flight.
7. Powerline or pipeline patrol.
8. Sightseeing. A flight which starts and ends at the same location and does not touch down at a public airfield in the course of a flight will be presumed to be for sightseeing or some other taxable activity and not a charter flight.
9. Student instruction and training flights. This includes solo flight training where the pilot is a registered student in a bona fide training program, is at all times flying in a regulated pattern, and is at all times under the control of the instructor. A charge to a student for the use of an airplane for a solo flight which does not meet the above conditions is taxable under retailing B&O tax and retail sales tax liability as the bare rental of an aircraft.

Extracting For Hire (B&O Tax):

1. The movement of logs from the location where the tree was cut to a "landing" within close proximity where the logs will be accumulated for later transportation by some other mode to the mill is part of the extracting activity.